No. 86-1855 (4)

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

DELTA AIR LINES, INC. and
WESTERN AIR LINES, INC.,

Petitioners,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AIRLINE DIVISION, and LOCAL UNION NO. 2707, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, and LOCAL UNION NO. 2747, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, and AIR TRANSPORT EMPLOYEES,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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SUPPLEMENTAL BRIEF FOR PETITIONERS

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

SUPPLEMENTAL BRIEF FOR PETITIONERS 1

APPENDICES

A. Decision of the National Mediation Board in *Delta Air Lines, Inc. and Western Air Lines, Inc.*, 14 N.M.B. No. 86 (July 9, 1987) A-1

B. The National Mediation Board's *Procedures for Handling Representation Issues Resulting from Mergers, Acquisitions or Consolidations in the Airline Industry*, 14 N.M.B. No. 103 (July 31, 1987) B-1

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SUPPLEMENTAL BRIEF FOR PETITIONERS

This supplemental brief is submitted by Petitioners to apprise the Court of the following recent actions of the National Mediation Board ("NMB" or "Board"):

1. On July 9, 1987, the Board issued its decision in the Delta Air Lines, Inc./Western Air Lines, Inc. merger case (*In the Matter of the Merger of Delta Air Lines,*

Inc. and Western Air Lines, Inc., 14 N.M.B. No. 86 (1987)) (Appendix A, attached hereto);

2. On July 31, 1987 the Board issued its new *Procedures for Handling Representation Issues Resulting from Mergers, Acquisitions or Consolidations in the Airline Industry*, 14 N.M.B. No. 103 (1987) (Appendix B, attached hereto).

As noted at page 23 of the Petition for a Writ of Certiorari, on April 20, 1987, Delta invoked the services of the NMB to determine whether the Board's certifications of certain labor organizations as collective bargaining representatives of the employees of various crafts or classes at Western were extinguished or terminated at the time of the merger of Western into Delta on April 1, 1987. In its July 9 decision, the NMB determined that certifications of all of the labor organizations were terminated as of April 1, 1987. (14 N.M.B. at 302, Appendix A-10).

As was also noted at page 23 of the Petition, the NMB had announced that definitive procedures on mergers and acquisitions were being developed. On July 31, 1987, those *Procedures* were issued. While not applicable to this merger, those procedures reconfirm the NMB's commitment to prompt resolution of representation issues resulting from the mergers of air carriers.

In both of these actions, the NMB has demonstrated that:

> the creation, change, and the termination of representation rights are within the province of the Board under the Railway Labor Act. At the same time the airline industry's proper growth and development as an essential component of our Nation's valuable transportation resources should be advanced. There is no conflict in these objectives and the Board intends to carry out its responsibilities through these procedures to afford the

> industry a greater measure of predictability in this important area.

(Appendix B-2). Through these actions the NMB has made clear that "the NMB alone is vested with final decision-making authority over representation issues." (Appendix B-1).

The unions here have sought to compel arbitration over "the creation, change, and termination of representation rights," matters that are reserved exclusively to the NMB. Arbitration in these circumstances is not appropriate, the district court properly dismissed these actions, and the decision of the Ninth Circuit Court of Appeals must be reviewed and reversed.

Respectfully submitted,

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APPENDIX

APPENDIX A

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

In the matter of the merger of

14 NMB No. 86

DELTA AIR LINES, INC.

FILE NO. C-5955

and

WESTERN AIR LINES, INC.

TERMINATION OF CERTIFICATIONS (WESTERN AIR LINES)

July 9, 1987

On April 20, 1987, the National Mediation Board (Board) received a request from Delta Air Lines, Inc. (Delta) invoking the Board's services "to determine whether the Board's certifications of the Western labor organizations as collective bargaining representatives of the various crafts or classes at Western have been extinguished or terminated effective April 1, 1987. Delta's request was made in accordance with *Trans World Airlines/Ozark Air Lines*, 14 NMB 218 (1987).

Review of the Board's records reveals that several labor organizations were certified to represent various crafts or classes at Western Air Lines, Inc. (Western). In R-4995, the Air Transport Employees was certified to represent the craft or class of Office, Clerical, Fleet & Passenger Service Employees. The Association of Flight Attendants was certified to represent the craft or class of Flight Attendants in R-3665. The International Brotherhood of Teamsters was certified to represent the crafts or classes of Instructors (R-4785), Mechanics and Related Employees (R-3951) and Stock Clerks (R-3788). The Air Line Pilots

Association represents the craft or class of Pilots pursuant to voluntary recognition.

On Delta the Pilots are represented by ALPA. The craft or class of Dispatchers is represented by the Professional Airline Flight Control Association pursuant to a certification in R-4254.

The Board, on April 23, 1987, directed Delta and Western to furnish certain information on the present operations of the airlines. Delta and the involved labor organizations submitted responses. Pursuant to the Board's request Delta submitted additional information on May 21, 1987, as well as June 16 and 22, 1987.

ISSUES

The following issues are before the Board:

1) Whether Delta and Western combined to form a single transportation system, for purposes of the Railway Labor Act, on April 1, 1987 and;

2) If a single transportation system was created, what affect if any does this have on the representation certifications of the organizations at Western and when did the affect occur?

PENDING LITIGATION

An issue arose from grievance actions filed by ATE, IBT and AFA prior to April 1, 1987. In those actions the unions sought to compel arbitration of grievances under their labor agreements with Western, alleging breach of successorship clauses in connection with the then-proposed merger of Western into Delta. The unions alleged that Western violated those clauses by failing to secure Delta's agreement to be bound by the unions' contracts after the merger was completed. Western refused to submit to arbitration contending that it might result in a decision on

representation of Delta employees after the merger. Representation matters, Delta asserted, are within the exclusive jurisdiction of the Board.

The unions filed actions in the district court for injunctions to compel arbitration. ATE and the IBT filed such action in the United States District Court for the Central District of California while AFA sought relief in the United States District Court for the District of Columbia. In all instances, the district courts denied the unions the relief requested. However, on appeal, the United States Court of Appeals for the Ninth Circuit, on March 31, 1987, ordered the IBT and Western to "select an arbitrator to decide the merits of the parties' disagreement over the interpretation of their collective bargaining agreement." The merger was also enjoined. *IBT* v. *Western Air Lines, Inc.*, Civil No. 87-5657 (9th Cir., March 17, 1987). A similar ruling regarding Western and ATE was made in *ATE* v. *Western Air Lines, Inc.*, Civil No. 87-5667 (9th Cir. March 17, 1987). AFA unsuccessfully appealed the decision of the District Court to the Circuit for the District of Columbia.

On April 1, 1987, the Honorable Sandra Day O'Connor, the Circuit Justice for the Ninth Circuit, stayed the orders of the Ninth Circuit pending the filing and disposition of a petition for certiorari to review the judgment of the Ninth Circuit. A Petition for Writ of Certiorari was filed by Delta on May 20, 1987.

CONTENTIONS

Delta

Delta contends that Western merged with it on April 1, 1987, and ceased to exist on that date. Therefore, Delta concludes that the certifications of the Western labor organizations were extinguished or terminated as of April 1, 1987.

Air Line Pilots Association (ALPA)

ALPA which represented pilots on both airlines has not taken a position on this matter.

Air Transport Employees (ATE)

ATE contends that before the Board can resolve the question of a merger, the agency must first decide whether it "has exclusive jurisdiction to resolve disputes over the obligations of carriers under a successorship clause." The organization requests that the Board "proceed to order an arbitration to resolve the interpretation of the successorship clause in the ATE-Western agreement." If the Board decides that it does not have the jurisdiction, ATE argues that the Board should state so in a very definitive manner and also state that the application of the successorship clause in the ATE-Western agreement would not impinge on representation matters which are within the exclusive jurisdiction of the Board. ATE asserts that the Board should state that its certification is "in effect" until the successorship question has been resolved through arbitration or an election has been held. Citing *Continental Airlines*, 10 NMB 25 (1982) for the proposition that the Board has permitted the recognition of two contracts and two labor organizations in a single craft or class pending an election, ATE argues that such action would not circumvent any provision of the Act.

International Brotherhood of Teamsters (IBT)

It is the IBT's position that its certifications cannot be terminated because there are outstanding contractual issues which are outcome determinative and the Board should not terminate certifications without an election. The IBT's position is based on two arguments. First, the IBT argues that due process considerations and relevant Board criteria "counsel" against termination of the union's certifications. In support of this argument, the IBT makes the following points:

1. Factual developments after April 1 would be radically different if the adjustment board [system board] proceeding had not been interrupted and the Union had prevailed.

2. Carriers must be made to understand that an operational integration conducted in violation of outstanding contractual obligations will not furnish grounds for termination of existing certifications.

3. It would violate the Union's due process rights for the Board to give conclusive effect to the Carriers' actions that occurred only because of a legal proceeding in which the Union was not allowed to participate.

4. It is wrong to allow actions undertaken under a temporary order to have "decisional significance." On this point, the IBT contends that the Carrier's object in this proceeding is to obtain a determination from the Board that the Union's certifications terminated, effective April 1, 1987, so they can conclude that Western's agreements are extinguished. This will enable them to claim that the Teamsters' legal case has been rendered moot by intervening events, i.e., the Board's decision. Thus, the Ninth Circuit Court of Appeals' judgment and order must be vacated and the case dismissed.

5. Because of the pending litigation, the Board's relevant criteria as developed in

TWA/Ozark cannot be fairly or accurately applied at the present time.

Second, the IBT argues that the Board should not terminate certifications, thereby allowing represented employees to become unrepresented, without first investigating the employees' representation desires. In this case, termination of certificates is inconsistent with the scheme of the Act because it presumes that a majority of employees in the post-merger craft or class reject representation based solely on the fact that a majority of craft or class employees on the acquiring carrier as it existed prior to the merger, have not selected a representative. Because of the unique circumstances of this case, termination of the certification effectively would constitute decertification.

Association of Flight Attendants (AFA)

AFA believes that the Board should rule that "AFA's certificate should be maintained pending final resolution of AFA's successorship claim." The unresolved question of the survivability of the collective bargaining agreement is crucial to any Board determination, it argues.

FINDINGS OF FACT

I.

Delta reports that Western's Federal Aviation Administration (FAA) certificate was surrendered on April 1, and, effective that same day, Delta's certificate was amended to include the former Western operations. Western, according to Delta, ceased to exist as a separate corporate entity when a Certificate of Ownership and Merger was filed with the Secretary of State of Delaware on April 1, 1987.

Delta states that Western is not holding itself out to the public as a single entity. Delta and Western are operating under a single Delta schedule. All Western iden-

tification and logo have been removed from Western aircraft and replaced with Delta's name and logo. Complete repainting of the aircraft will be accomplished by the fourth quarter of 1988. Identification changes were made on all ground equipment and Delta alleges that repainting of such equipment was accomplished by July 1, 1987.

Former Western employees now wear Delta uniforms or identification name tags. The labor relations for Western personnel is handled by Delta's Senior Vice President-Personnel. Western's Vice President-Labor Relations was made Delta's Assistant Vice President-Personnel.

There were no Western advertisements after March 15, 1987. Western's reservation system was merged into Delta's on April 1. No tickets have been issued on Western stock since April 1; all Western ticket stock has been destroyed. Former Western airport signs, city ticket office signs, identification materials in aircraft seat pockets, signs on maintenance and reservations facilities were changed from Western to Delta on or before April 1 or within a few days thereafter. Several Western officers have become officers of Delta and two Western directors have become directors of Delta.

II.

Investigation has revealed the following findings concerning the former Western employees. Delta voluntarily provided Western employees with Labor Protection Provisions (LPPS) "no less favorable" than the *Allegheny-Mohawk* Labor Protective Provisions. Titles for all positions at Western have been changed to coincide with the Delta titles so that the positions held by former Western personnel now are identified by the exact same titles as positions held by all other Delta personnel.

Pilots

Delta's pilots and the former Western pilots have merged seniority lists.

Mechanics and Related Employees

Under Delta's policies with respect to these employees, a seniority list is used only in the event of furloughs or transfers to other stations. For all purposes involving seniority, the employee's date of hire is used.

At Delta's request, the former Western employees and original Delta employees elected committees to negotiate the integration of the seniority lists. On June 17, 1987, the committees reached an agreement on a method for compiling an integrated seniority list. According to Delta, the actual integrated list based upon this agreement "will be compiled in the near future."

Office, Clerical, Fleet & Passenger Service Employees

All ground employees have been integrated and are working under Delta's policies, work rules and operating procedures. Western's general office and flight control functions have been transferred to Atlanta, Georgia, where "the former Western personnel have been consolidated with the original Delta personnel." To the extent that seniority is applicable to agents and clerical personnel, Delta states that such integration "was automatically accomplished" because date of hire is used for all matters governed by seniority.

III.

In reference to the Board's inquiry concerning the status of any grievances filed, Delta states that, on April 1, 1987, it "discontinued" the processing of any grievances with the former Western unions except ALPA. Such actions were based on Delta's interpretation of the *TWA/Ozark* case. Subject to assurances by the Board that such actions would not result in a finding of recognition of the involved unions, Delta states that it will resume processing "so that no employee will be deprived of any rights to which he or she is legally entitled." Delta proposes to process these

grievances in such a way that there will be no recognition of the union for collective bargaining purposes.

Delta will continue system board cases with the same system board procedures in place prior to the merger on the condition that the grievant and the union agree that Delta's actions will not result in any contention that Delta has recognized the union for collective bargaining purposes. The Carrier wants a "specific indication" from the Board that its action will not affect the Board's determination. Delta has notified everyone that it will not take any further action until the Board has ruled on this matter.

Discussion

I.

Pending Litigation

AFA and the IBT request that the Board delay a decision on the matter pending final resolution of the litigation. The Board finds that such a delay in this case would not enhance the Act's purpose of promoting labor stability. Sufficient facts have been presented to warrant determination of the specific issues before this Board.

ATE and AFA have asserted that the Board should state that the certifications are "in effect" pending resolution of the matter in litigation. For reasons stated below on the question of single transportation system, this request is denied.

II.

Single Transportation System

This is a situation where a merger or acquisition is alleged to have occurred and the surviving carrier is contending that a single transportation system exists. The Board in *Trans World Airlines/Ozark Airlines*, 14 NMB 218 (1987), enunciated several factors helpful in determin-

ing whether two carriers' operations have been integrated into a single transportation system:

> [T]he Board looks into such practical considerations as whether a combined schedule is published; how the carrier advertises its services; whether reservation systems are combined; whether tickets are issued on one carrier's stock; if signs, logos and other publicly visible indicia have been changed to indicate only one carrier's existence; whether the process of repainting planes and other equipment, to eliminate indications of separate existence, has been progressed.
>
> Other factors investigated by the Board seek to determine if the carriers have combined their operations from a managerial and labor relations perspective. Here the Board investigates whether labor relations and personnel functions are handled by one carrier; whether there are a common management, common corporate officers and interlocking Boards of Directors; whether there is a combined workforce; and whether separate identities are maintained for corporate and other purposes.[1]

Applying the above factors to the present factual situation, the Board finds that Western's operations have been merged into Delta. As a result of this merger and the foregoing findings, the Board holds that Western's certificates of representation terminated on April 1, 1987. This

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[1] The Board notes that while these factors are applicable in this instance, they may not be controlling in a particular case arising in the future. In fulfilling its responsibilities under Section 2, Ninth, the Board may "pierce the corporate veil for purposes of rational labor-management relations". *See Republic Airlines, Inc. and Hughes Air Corp.*, 8 NMB 49 (1980), and *Offshore Logistics, Aviation Services Division d/b/a Air Logistics*, 11 NMB 144 (1984).

holding is based on the present facts as revealed during this investigation including Delta's plans to merge the seniority lists for the flight attendants and the mechanics and related employees thereby effectively and completely merging its operations. The labor organizations and Delta are requested to report to this Board any significant departure from Delta's plans to resolve this matter or any significant change in the facts as presented to this Board. Delta is requested to inform the Board within 90 days of the date of this decision of its progress in completely merging the seniority lists for the flight attendants and the mechanics and related employees.

III.

Delta's Position on Processing Grievances

Delta has stated that it has suspended processing of grievances pending "specific indication" from the Board that the Carrier's actions will not affect the Board's determination. The Board is not in the position to provide such "specific indication". The grievance process arises out of contractual rights and, as such, is outside the jurisdiction of this Board. Accordingly, Delta's request for such "specific indication" is denied. The Board hastens to add that this decision cannot be interpreted as inhibiting the processing of grievances.[2]

CONCLUSION

Based on the foregoing and a review of the record before it, the Board finds that Western's certificates of representation terminated on April 1, 1987. ATE, AFA and

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[2] The Board finds disturbing any actions by the parties in a merger situation that result in withholding vested contractual rights. In this instance, the Board sees no reason why appropriate disclaimers should not effectively protect the rights involved and the processing of grievances should not be delayed further.

the IBT will each have 60 days from the date of this decision to file a representation application on the combined system supported by a minimum 35% showing of interest. Such showing of interest may be supported in part by the dues-checkoff authorizations previously in effect at Western. Delta is requested to inform the Board within 90 days of the date of this decision of its progress in completely merging the seniority lists for the flight attendants and the mechanics and related employees.

By direction of the NATIONAL MEDIATION BOARD.

/s/Charles R. Barnes
Charles R. Barnes
Executive Director

CRB/rwc

APPENDIX B

NATIONAL MEDIATION BOARD
WASHINGTON D.C. 20572

Procedures for Handling Representation Issues Resulting From Mergers, Acquisitions or Consolidations in the Airline Industry	14 NMB NO. 103 FILE NO. C-5956 PROCEDURES July 31, 1987

PREAMBLE

In the *TWA/Ozark* decision, 14 NMB 218 (1987), the Board committed itself to establishing new procedures for handling representation issues resulting from airline mergers, acquisitions or consolidations. The Board stated in *TWA/Ozark* that "[e]xperience has shown that existing procedures are inadequate to provide for a fair and orderly resolution of representation matters put into flux by a merger."

These procedures are issued pursuant to the Board's established authority under Section 2, Ninth, of the Railway Labor Act, 45 U.S.C. §152, Ninth.

The Board will utilize its traditional investigatory procedures to determine the facts relevant to the many variations of mergers and acquisitions. So long as the form and purpose of such mergers and acquisitions are not in derogation of employee rights under Section 2, Ninth, the Board will not inhibit or impede these developments or the full and thorough consideration of the important questions involved. There are factors that will make the Board's role difficult, the competition in the airline industry and the uncertainties of business planning.

The parties must recognize the NMB alone is vested with the final decision-making authority over representation issues. The merging or acquiring carriers are the in-

itiators of the contemplated change and it is their responsibility to keep the NMB fully informed. These carriers will decide the nature and scope of the change and the timing involved. The Board recognizes that consistency in planning, however desirable, may give way to business necessities. The Board's efforts will be advanced by prompt and complete information concerning relevant developments and the reasons involved.

In most cases, the initiating carriers contemplate the creation of a single carrier. This decision, when communicated to the Board in advance of a merger date, will invoke the Board's rules on single carrier status with implications concerning representation rights. The Board has had experience where carriers have merged or attempted to merge and presented the Board with representation issues at a date subsequent to the merger. The difficulties involved with post-merger representation questions are reflected in the Board's decisions.

Mergers that contemplate separate carrier status do not involve the same rules and, in fact, may affect representation rights. Accordingly, the NMB will require information on a continuing basis related to such operations to determine whether the separate status continues in fact.

In summary, the creation, change, and the termination of representation rights are within the province of the Board under the Railway Labor Act. At the same time the airline industry's proper growth and development as an essential component of our Nation's valuable transportation resources should be advanced. There is no conflict in these objectives and the Board intends to carry out its responsibilities through these procedures to afford the industry a greater measure of predictability in this important area.

The Board's principal reliance in the development of these merger procedures has been on the generous response of the industry to a request for guidance in de-

veloping sound, objective procedures for dealing with merger-related representation issues.* These findings are based on a comprehensive review of the carriers' and organizations' submissions, prior Board decisions and experience in recent mergers.

The following procedures shall apply to airline carriers and organizations. The Board anticipates the full cooperation of the carriers and organizations involved.

SUBPART A - GENERAL PROVISIONS

1) DEFINITIONS

a) The term "merger" as used herein shall mean a consolidation, merger, purchase, lease, operating contract or acquisition of control as provided by 49 U.S.C. §1378(b).

b) The term "carrier" means a common carrier by air as defined in Title II, Section 201, of the Railway Labor Act, 45 U.S.C. §181.

c) The term "organization" means a labor organization and representative as provided by Section 1, Sixth, 45 U.S.C. §151, Sixth, and Section 2, Ninth, 45 U.S.C. §152, Ninth of the Act.

2) APPLICABILITY OF THESE PROCEDURES

These procedures, effective August 1, 1987, shall apply to all organizations and air carriers which intend to engage in or may be affected by a merger which has not, as of that date, received final approval by the United States Department of Transportation.

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* Pursuant to the NOTICE in this matter, 14 NMB 249 (1987), the Board established an industry-wide proceeding. Participants were provided an opportunity to submit suggested procedures and then to comment on the procedures suggested by other participants. Eleven proposals and eight reply comments were received by the Board. A broad diversity of views was represented in these submissions.

SUBPART B - SINGLE TRANSPORTATION SYSTEM

1) FILINGS WITH NMB

The carrier will notify the NMB in writing at the same time it files with the Department of Transportation for approval of its intent to merge. The submission to the NMB shall include a complete copy of the carrier's merger application to the Department of Transportation.

2) MERGER INVESTIGATION

The NMB's investigation shall take the form required by the circumstances such as: interrogatories; document requests; on-site investigations; or hearings. The Board's merger investigation will determine whether the carriers will operate as a single transportation system. Applicable decisions regarding such investigations include but are not limited to *American/AirCal*, 14 NMB 379 (1987); *Delta/Western*, 14 NMB 291 (1987); *TWA/Ozark, supra.; Northwest*, 13 NMB 399 (1986); and *Republic/Hughes Airwest*, 8 NMB 49 (1980).

3) MERGER DECISION: PROSPECTIVE EFFECT

a) After investigation the Board will issue a decision concerning the status of the certifications on the merged carrier. Findings concerning the craft or class lines at the merged carrier may also be appropriate. The Board will endeavor to issue its decision on or before the time of the operational merger.

b) Where the Board finds that the certifications on the acquired carrier should terminate, such termination will be effective on or after the date of the Board decision.

4) REPRESENTATION APPLICATIONS FROM INCUMBENT LABOR ORGANIZATIONS

a) Incumbent organizations on the affected carriers will be allowed, absent unusual or extraordinary

circumstances, sixty days from the above-described decision to file a representation application supported by a showing of interest of no less than 35% of the combined craft or class.

b) Evidence of showing of interest from incumbent organizations on the affected carriers may be comprised of, wholly or in part, authorization cards, dues check-off authorizations or seniority lists with a carrier involved in the merger.

c) All other representation applications will be subject to the standard showing of interest requirements contained in the Board's Regulations at 29 CFR §§1206.2 and 1206.5.

d) Failure to meet the above described 35% showing of interest requirement by an incumbent organization will result in dismissal. Such dismissal or withdrawal of an application will not act to impose the one year election bar contained in the Board's Regulations at 29 CFR §1206.4.

5) ELECTIONS

Elections authorized pursuant to Subpart B will be given priority and progressed expeditiously through the balloting process and the final representation decision.

6) SUBSEQUENT REPORTING TO NMB

The Board may require carriers and organizations to inform it in writing of post-merger developments.

SUBPART C - SEPARATE TRANSPORTATION SYSTEMS

1) FILINGS WITH NMB

The carrier will notify the NMB in writing at the same time it files with the Department of Transportation for approval of its intent to merge. The submission to the

NMB shall include a complete copy of the carrier's merger application to the Department of Transportation.

2) NMB INQUIRY

The Board's inquity will request from the carriers and organizations appropriate information concerning the separate transportation systems.

3) CONTINUING DUTY TO REPORT

The Board may require carriers and organizations to inform it in writing of subsequent developments.

SUBPART D - MERGER OF OPERATIONS AT A LATER DATE

1) FILINGS WITH NMB

Carriers maintaining separate transportation systems, which subsequently seek to complete a merger of operations, shall notify the NMB at the earliest practicable date prior to the operational merger.

2) APPLICABILITY OF SUBPART B

Such cases shall be handled pursuant to the procedures established herein dealing with single carrier status at Subpart B, paragraphs 1-6.

SUBPART E - SUPPLEMENTARY MATTERS

1) CARRIER INVOCATIONS

Consistent with *TWA/Ozark, supra.*, at 14 NMB 241-242, carriers involved in a merger can invoke the Board's services for a determination of the post-merger status of any NMB certifications.

2) COMMENTS FROM INCUMBENT ORGANIZATIONS

Incumbent organizations on the affected carriers may make relevant comments to the NMB in writing concern-

ing the carriers' submissions and any other pertinent matters.

3) DISTRIBUTION OF INFORMATION

Carriers and organizations will provide other participants with copies of each submission to the NMB by verified certificate of simultaneous service signed by counsel.

4) PUBLIC INFORMATION

The information submitted to the Board by carriers and organizations will be public information.

5) ADMINISTRATIVE FILE NUMBERS

a) Representation applications filed by incumbent organizations pursuant to Subpart B, paragraph 4, will be assigned a file number in the MR-series.

b) Carrier invocations of the Board's services pursuant to Subpart E, paragraph 1, will be assigned a file number in the MT-series.

c) All other submissions under these procedures will be assigned a file number in the M-series.

SUBPART F - EFFECT OF PROCEDURES

1) NO IMPACT OF PROCEDURES ON VOLUNTARY RECOGNITION AGREEMENTS OR PROGRESSION OF GRIEVANCES

a) These procedures are not a bar to the effectuation of voluntary recognitions otherwise permissible under the Act. *See, TWA/Ozark,* 14 NMB 218 at 234 (1987); and *Republic Airlines*, 6 NMB 817 (1979).

b) These procedures shall not act to inhibit the processing of pending grievances otherwise permissible under the Act. *See, Delta/Western*, 14 NMB 291 at 302 (1987).

2) NO CHANGE IN EXISTING RIGHTS UNDER THE RAILWAY LABOR ACT

Existing rights under the Railway Labor Act shall not be enhanced or diminished by these procedures. The Board recognizes that when a dispute involves the interpretation or application of an airline collective bargaining agreement, Section 204 of the Railway Labor Act, 45 U.S.C. §184, provides that it be referred to an appropriate adjustment board for resolution through arbitration.

By direction of the NATIONAL MEDIATION BOARD

/s/Charles R. Barnes
Charles R. Barnes
Executive Director

Copies to:

Carriers and Labor Organizations in
the Airline Industry.

CRB/dss